

USURIOUS LOANS ACT, 1918

10 of 1918

[22nd March, 1918]

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STATEMENT OF OBJECTS AND REASONS "The object of this Bill is to prevent the Civil Courts being used for the purpose of enforcing harsh and unconscionable loans carrying interest at usurious rates. This subject has engaged the attention of the Government of India frequently in the past and in 1899 sections 16 and S.19 of the Contract Act, 1872, were amended so as to enunciate more clearly the principle on which a contract can be avoided on the ground of undue influence. Those amendments had' the effect of conferring on the Courts in India equitable jurisdiction in cases relating to usurious contracts in which the element of undue influence is established, but where undue influence cannot be established the result has been to emphasize the rigidity of section 2 of the Usury Laws Repeal Act (XXVIII of 1855), however exorbitant the demand, and however unconscionable the bargain. Further there has been a tendency on the part of the Courts to place upon the word "unconscionable" in s.16 of the Indian Contract Act, 1872 the, technical meaning which it has acquired in English equity, and consequently to limit their own powers of interference. Lastly the particular transaction before the Court is often merely one of a series and unless there is power to go behind it and examined antecedent agreements and attendant circumstances there is little hope of the Courts being able to come to an equitable decision. The remedy proposed by this Bill is to empower the Courts on the lines of S.1 of

the Money Lenders Act. 1900 (63 and 64 Vict, c. 51) to reopen transactions by way of money or grain loans in cases where the Court is satisfied (1) that the interest or other, return is excessive and (2) that the transaction is substantially unfair and after investigation of the circumstances, both attendant and antecedent, to revise the transaction between the parties and if necessary to reduce the amount payable to such sum as the Court, having regard to the risk and all the circumstances of the case, may decide to be reasonable. The Local Governments have been- consulted and legislation in this direction has commanded almost universal approval. Provision has been made to cover the case of loans of grain as well as of money, as loans in kind are often made on very oppressive terms. As there may be urban or rural areas where the proposed law is deemed unnecessary it has been provided that the Act shall not come into force in any Province or part of a Province except by notification." - Gazette of India. 1917. Part V, page 86.

1. Short title and extent :-

(1) This may be called THE USURIOUS LOANS ACT, 1918.

(2) It extends to ¹[the whole of India except] ¹[the territories which, immediately before the 1st November, 1956, were comprised in Part B States] ³[* * *].

(3) The ⁴[State Government] may, by notifications in the ³ [Official Gazette], direct that it shall not apply to any area, class of persons; or class of transactions which it may specify in its notification.

1. Substituted for the words 'all the Provinces of India' by A.L.O., 1950 and for "Part B States" by 3 A.L.O., 1956 (w.r.e.f. 1-11-1956), respectively.

3. The words "including British Baluchistan" were omitted by A.C.A.O., 1948.

4. Substituted by A.L.O., 1950 for the words "Provincial Government" and "Local Official Gazette".

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(1) "interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) "Loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "Suit to which this Act applies" means any suit-

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act; ¹ [or

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.]

1. Inserted by the Usurious Loans (Amendment) Act, 1926 (28 of 1926), S. 2.

3. Re-opening of transactions :-

(1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe,-

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may,-

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor

has parted with the security, order him to indemnify the debtor in such manner and to such . extent as it may deem just: Provided that, in the exercise of these powers, the Court shall not-

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than ¹[twelve] years from the date of the transaction:

(ii) do anything which affects any decree of a Court.

(2)

(a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.- Interest may. of itself be sufficient evidence that the transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan ² [or

for the redemption of any such security].

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section. For the purposes of this sub-section, the word "notice" shall have the same meaning as is ascribed to it in Section 4 of the Transfer of Property Act, 1882 .

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

OBJECTS AND REASONS "We think it well to commence clause 3 by a specific reference to the Usury Laws Repeal Act, 1855, as the powers conferred by the Bill override pro tanto the provisions of that Act. We have accepted the view that the Court may act under the provisions of this clause suo motu as we attach considerable weight to the body of opinion which suggests this course and have modified the language of the Bill accordingly. We have given careful consideration to the question whether there should not be some restriction on the powers of the Court to re-open agreements closing previous dealings and creating new obligations.' We think that there is something to be said for the view that the Courts should not be required or allowed in such a case to go back beyond a definite period. In the case of a running account such a restriction is not possible, but we have accepted the view that where there is such an agreement which has been entered into by the parties or by their representatives in interest, the Court should not be allowed to re-open the agreement if it was made more than six years prior to the transaction before the Court. We have therefore inserted a proviso limiting in this way the powers under clause 3 (1) of the Bill annexed to this Report. To prevent any misapprehension we have also laid it down that the powers conferred by the clause shall not be used in such a way as to affect the decree of a Court. We have accepted the view expressed in many opinions that the concluding words of clause 2 (2) (a) of the Bill, referred to us should be omitted. We recognized that there is some danger of a local combination creating a prevailing rate which would be an excessive rate. We have amended the closing words of sub-clause (2) (b) so as to make it clear that it is for the Court to decide the total advantage which may reasonably be taken to have been expected from any transaction. We have inserted an Explanation to make it clear that interest may of itself be sufficient evidence that a transaction is substantially unfair. By doing so we have deliberately adopted the view set forth in the House of Lords in Samuel v. Newbold (1906) A. C. 401. We have modified the provision in the Bill by which protection is afforded to a transferee for value so as to make it clear that it only extends to a case where

a Court is satisfied that the transfer is bona fide, and that the transferee had at the time of the transfer no notice of any fact which would have entitled the debtor as against the lender to relief under Clause 3."- S. C. R.

1. Substituted for the word "six" by the Usurious Loans (Amendment) Act, 1926 (28 of 1926), S. 3.

2. Inserted, Substituted for the word "six" by the Usurious Loans (Amendment) Act, 1926 (28 of 1926), S. 3.

4. Insolvency proceedings :-

On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act Applies.